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Via Electronic Filing

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The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423

Re: STB Docket No. 42097
Albemarle Corporation v. The Louisiana and North West Railroad Company

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding is **The Louisiana and North West Railroad Company's Reply In Opposition To The Petition for Reconsideration.**

Please contact me if you have any questions regarding this matter. Thank you.

Respectfully submitted,

Edward J. Fishman
Attorney for Louisiana and North West Railroad
Company

cc: Martin W. Bercovici, Esq. (via e-mail)

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. 42097

**ALBEMARLE CORPORATION
v.
THE LOUISIANA
AND NORTH WEST RAILROAD COMPANY**

**THE LOUISIANA AND NORTH WEST RAILROAD COMPANY'S
REPLY IN OPPOSITION TO PETITION FOR RECONSIDERATION**

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**ATTORNEYS FOR THE LOUISIANA AND
NORTH WEST RAILROAD COMPANY**

Dated: September 7, 2006

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SURFACE TRANSPORTATION BOARD**

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The Louisiana and North West Railroad Company ("LNW") respectfully submits this Reply in Opposition to the Petition for Reconsideration filed in this complaint proceeding by Albemarle Corporation ("Albemarle") on August 21, 2006. LNW strongly objects to Albemarle's repeated and unjustified attempts to further delay the resolution of the issues under consideration in Docket No. 42096. The Board denied Albemarle's previous request to consolidate this linehaul rate complaint proceeding with the declaratory order proceeding in Docket No. 42096. Albemarle has failed to provide any legitimate basis for reversing the Board's previous decision not to consolidate the two proceedings. Therefore, Albemarle's Petition for Reconsideration should be denied.

The Board correctly determined in its August 1, 2006 decision that Docket No. 42096 (the declaratory order proceeding) and Docket No. 42097 (the linehaul rate complaint proceeding) involve "distinct and substantially different underlying facts and legal standards"

and that by denying consolidation “the Board avoids any prejudice to LNW from an unnecessary delay in STB Docket No. 42096 until the completion of [Ex Parte 657].” Albemarle Corporation v. The Louisiana and North West Railroad Company, Docket No. 42097 (STB served August 1, 2006)(“August 1st Decision”). The situation has not changed since the Board’s August 1st Decision. The two proceedings involve substantially different underlying facts and legal standards, and LNW will continue to be prejudiced if Docket No. 42096 is further delayed until the final completion of the Ex Parte 657 proceeding.

As LNW recently explained to the Board in its August 25th Reply to Albemarle’s Petition for Emergency Service Order in S.O. 1526 and its September 6th Response to Albemarle’s Second Rebuttal in that proceeding, the issues under consideration in Docket No. 42096 (and the related S.O. 1526 proceeding) relate to activities that occur separate and apart from the linehaul service that LNW provides to Albemarle. The intra-plant switching, storage and weighing services that LNW is being forced to provide under unacceptable economic and indemnity terms (as a result of the federal court’s preliminary injunction and the Board’s inaction in Docket No. 42096) are activities that are performed before or after LNW’s linehaul service (the rates for which are the subject of this proceeding). Substantial further delay in the resolution of Docket No. 42096 (and the related S.O. 1526 proceeding) will subject LNW to significant financial harm (since it is being forced to provide intra-plant switching to Albemarle at below cost) and likely economic ruin in the event of a release of the highly hazardous chemicals that LNW is being forced to store on its property for Albemarle.

Albemarle’s argument in support of reconsideration is based primarily on the assertion that Albemarle intends to use the stand-alone cost (SAC) methodology to challenge the reasonableness of LNW’s storage, weighing and intra-plant switching charges at issue in Docket

No. 42096 and the reasonableness of LNW's linehaul rates in this proceeding. Irrespective of Albemarle's intentions, Albemarle's argument completely ignores the significant jurisdictional challenges that LNW has raised to the Board's jurisdiction over the reasonableness of LNW's storage, weighing and intra-plant switching charges at issue in Docket No. 42096.¹ These threshold jurisdictional issues must be resolved before Albemarle can proceed with any challenge to the reasonableness of the storage, switching and intra-plant switching charges. Moreover, despite Albemarle's suggestion, LNW has not conceded and the Board has not determined conclusively that the SAC methodology would be the most appropriate methodology to apply in evaluating the reasonableness of LNW's storage, weighing and intra-plant switching charges (assuming the Board determines it has rate reasonableness jurisdiction over such charges). Therefore, Albemarle has failed to justify why the Board should hold Docket No. 42096 in abeyance until the completion of the Ex Parte 657 proceeding and the finalization of the SAC standards that might be applied in this and other similar linehaul rate complaint proceedings.

Albemarle makes the self-serving claim that it will be more efficient for LNW to have a single SAC analysis applicable to the evaluation of the reasonableness of all LNW services. LNW does not necessarily agree with this claim, but more importantly notes that Albemarle's perception of efficiency should not trump fairness. It is ironic that Albemarle purports to rely on an efficiency argument when its true motive here is further delay. Albemarle is perfectly content with the status quo, where LNW is forced to provide intra-plant switching, storage and weighing services pursuant to unacceptable economic and liability terms. Thus, Albemarle seeks to drag

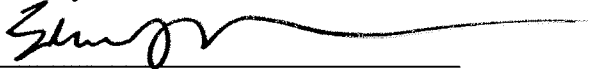
¹ LNW also continues to believe that the Board does not have jurisdiction over the linehaul rate complaint that Albemarle initiated in this proceeding for the reasons set forth in LNW's pending Motion to Dismiss.

out the resolution of Docket No. 42096 as long as it possibly can for its own gain.

The Board should not condone Albemarle's dilatory tactics because they are inconsistent with the national rail transportation policy the Board is empowered to uphold, which requires that the Board must "provide for the expeditious handling and resolution of all proceedings." 49 U.S.C. § 10101(15). Albemarle has not demonstrated any "material error, new evidence or substantially changed circumstances" necessary to support its Petition for Reconsideration. 49 U.S.C. § 722(c). Its sole motive here is further delay.

In summary, LNW strongly objects to Albemarle's repeated attempts to consolidate this linehaul rate complaint proceeding with Docket No. 42096. The Board already has determined that consolidated is not warranted. Albemarle has failed to provide any legitimate basis for overturning that decision. Thus, LNW urges the Board to deny Albemarle's Petition for Reconsideration.

Respectfully submitted,

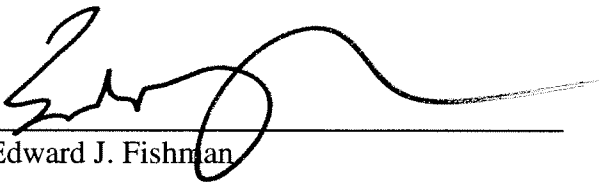
By: 

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CERTIFICATE OF SERVICE

I hereby certify that on September 7, 2006 a copy of the foregoing Reply in Opposition to
Petition for Reconsideration was served by electronic mail on:

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